

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THE EMMES COMPANY, LLC,

Plaintiff,

v.

SAP AMERICA, INC.,

Defendant.

CIVIL ACTION

NO. 21-0019

ORDER

AND NOW, this 29th day of July 2021, upon consideration of Plaintiff's Motion for Leave to Amend Nunc Pro Tunc (ECF 36) and Defendant's Response (ECF 38), it is hereby **ORDERED** that the Motion is **GRANTED in part** and **DENIED in part** as follows:

1. The Motion is **GRANTED** insofar as Plaintiff seeks to amend its Complaint with respect to its breach of contract (proposed Count I), negligence (proposed Count II) and breach of warranty (proposed Count V) claims.
2. The Motion is **DENIED** insofar as Plaintiff seeks to amend its Complaint with respect to its vicarious liability claim (proposed Count III) and request for declaratory judgment (proposed Count IV). Those claims are **DISMISSED with prejudice**.
3. Plaintiff shall **FILE** a Second Amended Complaint consistent with this Order and the Court's Memorandum **on or before Thursday, August 12, 2021**, and that Second Amended Complaint shall serve as the operative pleading in this case. The Second Amended Complaint shall be a two-count pleading alleging negligence and either breach of contract or breach of warranty. The

Second Amended Complaint shall not re-allege claims that have been dismissed by the Court with prejudice.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.